

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CASE NO. 04-44523 NCD**

Daniel G. Hawkins  
SSN XXX-XX-4246  
Peggy S. Hawkins  
Peggy Baker-Hawkins  
SSN XXX-XX-9662

**CHAPTER 13 CASE**

Debtor.

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**NOTICE OF OBJECTION TO CONFIRMATION OF PLAN**

TO: Debtor and other entities specified in Local Rule 3015-3.

1. U.S. Bank National Association, as Trustee c/o Litton Loan Servicing (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this objection at 10:30 a.m. on October 7, 2004, before the Honorable Nancy C. Dreher in Courtroom 7 West at U.S. Courthouse, 300 South 4<sup>th</sup> Street, Minneapolis, Minnesota.
3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on October 6, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than October 4, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed August 13, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.
6. Debtor is indebted to Secured Creditor in the principal amount of \$108,000.00, as evidenced by that certain Promissory Note dated February 20, 2001, together with interest thereon.
7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated February 20, 2001, executed by Daniel G. Hawkins and Peggy Hawkins, husband and wife, recorded July 10, 2001, as Document No. 3408549, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A".
8. Said plan is objected to on the basis that the plan, as proposed by Debtor, does not provide for payment of the arrears based on the Proof of Claim filed by Secured Creditor.
9. Said plan is also objected to on the basis that Debtor is delinquent in their pre-petition monthly mortgage payments to Secured Creditor for the months of April, 2004 through August, 2004, in the total amount of \$11,538.57, including late charges. In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, does not provide for payment of the arrears based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).
10. The value of the property as scheduled by Debtor is \$160,000.00 subject to Secured Creditor's mortgage in excess of \$116,901.46. The property is also subject to a second mortgage in favor of Beneficial Household Finance in excess of \$30,000.00 as scheduled by Debtor
11. The plan, as proposed, is not made in good faith by Debtor.

. . .

. . .

12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 16th day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Suite 300  
Woodbury, Minnesota 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO  
COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT  
PURPOSE.

Feb. 14, 2002 1:38PM UNIVERSAL TITLE

No. 1624 P. 6/10

15/50  
15/50

*Michael G. Gandy*  
 REGISTRAR OF TITLES  
 BY *[Signature]* DEPUTY

JUL 19 2001 2pm

OFFICE OF THE REGISTRAR  
 OF TITLES  
 HENRIEN COUNTY, MINNESOTA  
 CERTIFIED FILED ON

856263

3408549

(Space Above This Line For Recording Date)

## MORTGAGE

Gibraltar Title  
 Box 615  
 27251

Return To:  
 NEW CENTURY MORTGAGE CORPORATION

18400 VON KARMAN, SUITE 1800  
 IRVINE, CA 92612

Henn Co TRT  
 JES019143  
 06/18/2001  
 Paid \$259.20

## DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instruments" means this document, which is dated February 28, 2001 together with all Riders to this document.

0000450527

MINNESOTA Single Family-Fannie Mae Freddie Mac UNIFORM INSTRUMENT

Form 8024 1/01

-8(MH) 2000

Page 1 of 12

VUE MORTGAGE FORM - (000001-7001)

By *[Signature]* P.H.EXHIBIT 1

-Feb.14. 2002- 1:39PM- UNIVERSAL TITLE-

No.1624 P. 7/10

(B) "Borrower" is  
**DANIEL S. HAWKINS AND PEGGY HAWKINS, HUSBAND AND WIFE**

*Daniel S. Hawkins*  
*Peggy Hawkins*

Borrower is the mortgagor under this Security Instrument.  
 (C) "Lender" is **NEW CENTURY MORTGAGE CORPORATION**

Lender is a CORPORATION  
 organized and existing under the laws of CALIFORNIA  
 Lender's address is 10400 VON HARMAN, SUITE 1000  
 IRVINE, CA 92612

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated February 28, 2001  
 The Note states that Borrower owes Lender **One Hundred Eight Thousand and No/100**

**(U.S. \$ 108,000.00)** plus interest. Borrower has promised to pay this debt in regular Periodic  
 Payments and to pay the debt in full not later than March 1, 2021 Dollars

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the  
 Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges  
 due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following  
 Riders are to be executed by Borrower (check box as applicable):

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) (specify)
		Prepayment Rider
		Arm Rider Addendum

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,  
 ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,  
 non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other  
 charges that are imposed on Borrower or the Property by a condominium association, homeowners  
 association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check,  
 draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument,  
 computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an  
 account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine  
 transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Hawthorn Items" means those items that are described in Section 3.

UNIVERSAL TITLE

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Form 3024 1/01

P.H.

02/14/2002 11:11

02/14/2002 11:11

Feb. 14. 2002 1:39PM UNIVERSAL TITLE

No. 1624 P. 8/10

**LEGAL DESCRIPTION**

**Lot 6, Block 1, Roger's 4th Addition, Hennepin County, Minnesota**

**Commonly known as: 7400 Douglas Drive, Brooklyn Park MN 55443**

**Town's Property - Certificate of Title No. 856263**

**Property located in:**

**Hennepin County, Minnesota**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 13 CASE**

Daniel G. Hawkins  
SSN XXX-XX-4246  
Peggy S. Hawkins  
Peggy Baker-Hawkins  
SSN XXX-XX-9662

**CASE NO. 04-44523 NCD**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on September 16, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Daniel G. Hawkins  
Peggy S. Hawkins  
7400 Douglas Dr.  
Brooklyn Park, MN 55443

Jasmine Z. Keller  
12 South 6th Street, Suite 310  
Minneapolis, MN 55402

Laurie Savran  
1422 W. Lake St. Ste 320  
Minneapolis, MN 55408

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 16th day of September, 2004.

/s/ Diana Waletzko  
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**ORDER DENYING CONFIRMATION  
OF PLAN**

Daniel G. Hawkins  
SSN XXX-XX-4246  
Peggy S. Hawkins  
Peggy Baker-Hawkins  
SSN XXX-XX-9662

Debtor.

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**CASE NO. 04-44523 NCD**

This Chapter 13 Case came on before the Court on October 7, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed September 15, 2004, is denied.

Dated: \_\_\_\_\_  
Judge of Bankruptcy Court